

NATURAL RESOURCES CODE
SUBTITLE E. BEACHES AND DUNES
CHAPTER 61. USE AND MAINTENANCE OF PUBLIC BEACHES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Construction" means causing or carrying out any building, bulkheading, filling, clearing, excavation, or any substantial improvement to land or the size of any structure.

(3) "Department" means the Parks and Wildlife Department.

(4) "Land office" means the General Land Office.

(5) "Line of vegetation" means the extreme seaward boundary of natural vegetation which spreads continuously inland.

(6) "Littoral owner" means the owner of land adjacent to the shore and includes a lessee, licensee, or anyone acting under the littoral owner's authority.

(7) "Local government" means a municipality, county, or any other political subdivision of the state.

(8) "Public beach" means any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over the area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom. This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code.

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 4, eff. June 7, 1991.

SUBCHAPTER B. ACCESS TO PUBLIC BEACHES

Sec. 61.011. POLICY AND RULES. (a) It is declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or if the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous right in the public, the public shall have the free and unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(b) The legislature recognizes that, in order to provide and maintain public facilities and public services to enhance access to and safe and healthy use of the public beaches by the public, adequate funds are required to provide public facilities and public services. Any local government responsible for the regulation, maintenance, and use of such beaches may charge reasonable fees pursuant to its authority to cover the cost of discharging its responsibilities with respect to such beaches, provided such fees do not exceed the cost of such public facilities and services, and do not unfairly limit public access to and use of such beaches.

(c) The commissioner shall strictly and vigorously enforce the prohibition against encroachments on and interferences with the public beach easement.

(d) The commissioner shall promulgate rules, consistent with the policies established in this section, on the following matters only:

(1) acquisition by local governments or other appropriate entities or public dedication of access ways sufficient to provide adequate public ingress and egress to and from the beach within the area described in Subdivision (6);

(2) protection of the public easement from erosion or reduction caused by development or other activities on adjacent land and beach cleanup and maintenance;

(3) local government prohibitions of vehicular traffic on public beaches, provision of off-beach parking, and other minimum measures needed to mitigate for any adverse effect on public access and dune areas;

(4) imposition of beach access, user, or parking fees and reasonable exercises of the police power by local governments with respect to public beaches;

(5) contents and certification of beach access and use

plans and standards for local government review of construction on land adjacent to and landward of public beaches;

(6) construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public access to and use of public beaches; and

(7) the temporary suspension under Section 61.0185 of enforcement of the prohibition against encroachments on and interferences with the public beach easement and the ability of a property owner to make repairs to a house while a suspension is in effect.

(e) Repealed by Acts 2003, 78th Leg., ch. 245, Sec. 9.

(f) Chapter 2007, Government Code, does not apply to rules adopted under Subsection (d)(7).

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 5, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 1, 9, eff. June 18, 2003.

Sec. 61.012. DEFINITION. In this subchapter, "beach" means state-owned beaches to which the public has the right of ingress and egress bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.013. PROHIBITION. (a) It is an offense against the public policy of this state for any person to create, erect, or construct any obstruction, barrier, or restraint that will interfere with the free and unrestricted right of the public, individually and collectively, lawfully and legally to enter or to leave any public beach or to use any public beach or any larger area abutting on or contiguous to a public beach if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) Unless properly certified as consistent with this subchapter, no person may cause, engage in, or allow construction landward of and adjacent to a public beach within the area described in Section 61.011(d)(6) of this code in a manner that will or is likely to affect adversely public access to and use of the public beach. The prohibition in this subsection takes effect only on adoption of final rules by the commissioner under Section 61.011 of this code.

(c) For purposes of this section, "public beach" shall mean any beach bordering on the Gulf of Mexico that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1607, ch. 681, Sec. 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4818, ch. 850, Sec. 1, eff. June 19, 1983; Acts 1991, 72nd Leg., ch. 295, Sec. 6, eff. June 7, 1991.

Sec. 61.014. DENIAL OF ACCESS BY POSTING. (a) As used in this section, "public beach" means the area extending from the line of mean low tide of the Gulf of Mexico to the line of vegetation bordering on the Gulf of Mexico, or to a line 200 feet inland from the line of mean low tide, whichever is nearer the line of mean low tide, if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) No person may display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or cause to be made any written or oral communication which states that the public beach is private property or represent in any other

manner that the public does not have the right of access to the public beach as guaranteed by this subchapter.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1607, ch. 681, Sec. 1, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 295, Sec. 7, eff. June 7, 1991.

Sec. 61.015. BEACH ACCESS AND USE PLANS. (a) Each local government with ordinance authority over construction adjacent to public beaches and each county that contains any area of public beach within its boundaries shall adopt a plan for preserving and enhancing access to and use of public beaches within the jurisdiction of the local government. Such beach access and use plans must be consistent with the policies in Section 61.011 of this code and the rules promulgated thereunder and Chapter 63 of this code and shall to the greatest extent practicable incorporate the local government's ordinary land use planning procedures. A municipality may adopt and apply any appropriate ordinances within its extraterritorial jurisdiction to effect the purposes of this subchapter.

(b) Local governments shall submit proposed beach access and use plans to the commissioner for certification as to compliance with such policies and rules. The commissioner shall act on a local government's proposed beach access and use plan within 60 days of submission by either approving the plan or denying certification. In the event of denial, the commissioner shall send the proposed plan back to the originating local government with a statement of specific objections and the reasons for denial, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan. The commissioner's certification of local government plans shall be by adoption into the rules under Section 61.011.

(c) A littoral owner proposing construction adjacent to and landward of a public beach in the area described in Section 61.011(d)(6) shall submit a development plan to the appropriate local government. The local government shall forward the development plan to the commissioner no less than 10 working days prior to acting on the development plan. The commissioner may submit comments on the proposed construction to the local government.

(d) The local government shall review the proposed development plan and the commissioner's comments and other information the local government may consider useful to determine consistency with the local government's beach access and use plan.

(e) If the proposed construction is required to be permitted by the local government under Chapter 63 of this code, the local government shall consider the issuance of the permit concurrently with the certification under this section, unless otherwise provided by rules promulgated under Section 61.011 of this code.

(f) The local government, after considering all appropriate information, shall make the determination and shall certify that the construction as proposed either is consistent with the local government's beach access and use plan or is inconsistent with the local government's beach access and use plan, in which case the local government must specify how the construction is inconsistent with the plan.

(g) The local government may include in the certification any reasonable terms and conditions it finds necessary to assure adequate public beach access and use rights consistent with Chapter 63 of this code.

(h) The requirements of this section take effect only on adoption of final rules by the commissioner under Section 61.011 of this code.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 8, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 2, eff. June 18, 2003.

Sec. 61.016. BOUNDARIES FOR AREAS WITH NO MARKED VEGETATION LINE. (a) To determine the "line of vegetation" in any area of public beach in which there is no clearly marked line of vegetation (for instance, a line immediately behind well-defined dunes or mounds of sand and at a point where vegetation begins) recourse shall be to the nearest clearly marked line of vegetation on each side of the unmarked area.

(b) The "line of vegetation" for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side.

(c) If the elevation of the two points on each side of the area are not the same, the extension defining the "line of vegetation" shall be the average elevation as between the two points, but if there is no clearly marked line of vegetation, the "line of vegetation" shall not extend inland further than 200 feet from the seaward line of mean low tide.
Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 9, eff. June 7, 1991.

Sec. 61.017. LINE OF VEGETATION UNAFFECTED BY CERTAIN CONDITIONS. (a) The "line of vegetation" is not affected by the occasional sprigs of salt grass on mounds and dunes or seaward from them and by artificial fill, the addition or removal of turf, or by other artificial changes in the natural vegetation of the area.

(b) If the changes listed in Subsection (a) of this section are made and the vegetation line is obliterated or is created artificially, the line of vegetation shall be determined in the same manner as in those areas covered by Section 61.016 of this code, but if there is a vegetation line consistently following a line more than 200 feet from the seaward line of mean low tide, the 200-foot line shall constitute the landward boundary of the area subject to public easement until a final court adjudication establishes the line in another place.

(c)(1) In an area of public beach where a seawall structure constructed in its entirety as a single structure of one design before 1970 and continuously maintained with a height of not less than 11 feet above mean low tide interrupts the natural line of vegetation for a distance not less than 4,000 feet nor greater than 4,500 feet, the line of vegetation is along the seaward side of the seawall for the distance marked by the seawall, provided that prior to September 2, 1997:

(A) a perpetual easement has been granted in favor of the public affording pedestrian, noncommercial use along and over the entire length of the seawall and adjacent sidewalk by the general public;

(B) fee title to the surface estate to an area for public parking and other public uses adjacent to the seawall has been conveyed to and accepted by a public entity, which area contains sufficient acreage to provide at least one parking space for each 15 linear feet of the seawall, is located within the center one-third of the length of the seawall or not farther than 300 feet from that center one-third, and has frontage on the seawall for at least 300 linear feet; and

(C) permanent roadway easements exist within 1,000 feet of each end of the seawall affording vehicular access from the nearest public road to the beach.

(2) A line of vegetation established as described in this subsection shall be the landward boundary of the public beach and of the public easement for all purposes. Fee title to all submerged land as described in this code shall remain in the State of Texas.

(d)(1) In an area of public beach where a combination stone revetment and concrete sheet pile wall constructed in its entirety as a single structure before 1999 and continuously maintained with a height of not less than five feet above mean low tide interrupts the natural line of vegetation for a distance not less than 7.5 miles and not more than 8.5 miles, the line of vegetation is along the landward boundary of that strip of land conveyed to the United States of America for the construction of the stone revetment and concrete sheet pile wall and for the distance marked by the stone revetment and concrete sheet pile wall.

(2) A line of vegetation established as described by this subsection is the landward boundary of the public beach and of the public easement for all purposes. Fee title to all submerged land as described in this code shall remain in the State of Texas.
Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 593, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 331, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2001.

Sec. 61.018. ENFORCEMENT. (a) Any county attorney, district attorney, or criminal district attorney, or the attorney general at the request of the commissioner, shall file in a district court of Travis County, or in the county in which the property is located, a suit to obtain either a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove or prevent

any improvement, maintenance, obstruction, barrier, or other encroachment on a public beach, or to prohibit any unlawful restraint on the public's right of access to and use of a public beach or other activity that violates this chapter.

(b) In the same suit, the attorney general, the commissioner, county attorney, district attorney, or criminal district attorney may recover penalties and the costs of removing any improvement, obstruction, barrier, or other encroachment if it is removed by public authorities pursuant to an order of the court.

(c) A person who violates this chapter is liable for a civil penalty of not less than \$50 nor more than \$1,000. Each day the violation occurs or continues is a separate violation.

(d) Any county attorney, or the attorney general at the request of the commissioner, may bring a suit for a declaratory judgment to try any issue affecting the public's right of access to or use of the public beach.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 10, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 3, eff. June 18, 2003.

Sec. 61.0185. TEMPORARY SUSPENSION OF SUBMISSION OF REQUESTS THAT ATTORNEY GENERAL FILE SUIT. (a) The commissioner by order may suspend for a period of two years from the date the order is issued the submission of a request that the attorney general file a suit under Section 61.018(a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach if the commissioner determines that:

(1) the line of vegetation establishing the boundary of the public beach has moved as a result of a meteorological event;

(2) the house was located landward of the natural line of vegetation before the meteorological event; and

(3) the house does not present an imminent threat to public health and safety.

(b) The commissioner shall make a determination under Subsection (a) regarding the line of vegetation in accordance with Sections 61.016 and 61.017.

(c) The commissioner shall consult with the Bureau of Economic Geology of The University of Texas at Austin when making a determination under Subsection (a) regarding:

(1) the line of vegetation; or

(2) the effect of a meteorological event on the location of the public beach easement.

(d) This section does not apply to a house that the commissioner determines to be:

(1) located in whole or in part below mean high tide; or

(2) more than 50 percent destroyed as a result of a meteorological event.

(e) An order issued under this section shall be:

(1) posted on the land office's Internet website;

(2) published by the land office as a miscellaneous document in the Texas Register; and

(3) filed for record by the land office in the real property records of the county in which the house is located.

(f) The commissioner shall notify the attorney general and each pertinent county attorney, district attorney, or criminal district attorney of the issuance of an order under this section.

(g) A county attorney, district attorney, or criminal district attorney may not file suit under Section 61.018(a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach while the house is subject to an order issued under this section.

(h) While an order issued under this section is in effect, a local government may:

(1) issue a certificate or permit authorizing repair of a house subject to the order if the local government determines that the repair:

(A) is solely to make the house habitable;

(B) complies with rules adopted by the commissioner under Section 61.011(d)(7); and

(C) does not increase the footprint of the house or involve the use of concrete, Fibercrete, or other impervious materials seaward of the line of vegetation; and

(2) allow utilities to be reconnected to a house subject to the order.

(i) Issuance of an order under this section is purely within

the discretion of the commissioner. This section does not create:

(1) a duty on the part of the commissioner to issue an order related to all or part of a house, regardless of any determination made; or

(2) a private cause of action for:

(A) issuance of an order under this section; or

(B) failure to issue an order under this section.

(j) Chapter 2007, Government Code, does not apply to an order issued under this section.

(k) If the commissioner issues an order under this section, a limitations period established by statute, under common law, or in equity that may be asserted or claimed in any action under this chapter is suspended and does not run against this state, the public, or the owner of the house for the period the order is in effect.

(1) Expenses incurred while an order issued under this section is in effect by the owner of a house in an effort to repair or otherwise make the house habitable may not be claimed as damages in any litigation with this state or a local government that may be filed to enforce this chapter.

Added by Acts 2003, 78th Leg., ch. 245, Sec. 4, eff. June 18, 2003.

Sec. 61.019. DECLARATORY JUDGMENT SUITS. (a) A littoral owner whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(b) Service of citation on the state shall be made by serving the citation on the attorney general.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.020. PRIMA FACIE EVIDENCE. In a suit brought or defended under this subchapter or whose determination is affected by this subchapter, a showing that the area in question is located in the area from mean low tide to the line of vegetation is prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea; and

(2) there is imposed on the area a common law right or easement in favor of the public for ingress and egress to the sea.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 11, eff. June 7, 1991.

Sec. 61.021. AREA NOT COVERED BY SUBCHAPTER. (a) None of the provisions of this subchapter apply to beaches on islands or peninsulas that are not accessible by a public road or ferry facility for as long as the condition exists.

(b) A local government or local official may not adopt, apply, or enforce a beach access and use plan or any other provision of this subchapter within a state or national park area, wildlife refuge, or other designated state or national natural area.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 14, eff. June 7, 1991.

Sec. 61.0211. STATE OR NATIONAL PARK COVERED BY SUBCHAPTER. This subchapter applies to any island or peninsula that is a state or national park or wildlife management area regardless of whether the island or peninsula is accessible by public road or ferry facility.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 12, eff. June 7, 1991.

Sec. 61.022. GOVERNMENT AGENCIES AND SUBDIVISIONS. (a) The provisions of this subchapter do not prevent any of the following governmental entities from erecting or maintaining any groin, seawall, barrier, pass, channel, jetty, or other structure as an aid to navigation, protection of the shore, fishing, safety, or other lawful purpose authorized by the constitution or laws of this state or the United States:

(1) an agency, department, institution, subdivision, or instrumentality of the federal government;

(2) an agency, department, institution, or instrumentality of this state;

(3) a county;

(4) a municipality; or

(5) a subdivision of this state, other than a county or municipality, acting in partnership with the county or municipality in which the structure is located.

(b) No local government may regulate vehicular traffic so as to prohibit vehicles from an area of public beach or impose or increase public beach access, parking, or use fees in any manner inconsistent with the policies of Section 61.011 of this code or the rules promulgated thereunder.

(c) A local government proposing to adopt or amend such vehicular traffic regulations, except those for public safety, or fees shall submit a plan detailing the proposed action to the commissioner for review. The commissioner shall certify whether the proposed action is consistent or inconsistent with such policies and rules. Certifications of consistency shall be by adoption into the rules promulgated under Section 61.011.

(d) Subsections (b) and (c) of this section take effect only on adoption of final rules by the commissioner under Section 61.011 of this code. Subsections (b) and (c) of this section do not apply to any existing local government traffic regulation or beach access, parking, or use fee adopted or enacted before the effective date of Subsections (b) and (c) of this section, and the former law is continued in effect for the purpose of the existing regulations and fees, until the regulations or fees are amended or changed in whole or in part.

(e) State-owned or public land not specifically exempted by this chapter shall be subject to the same requirements of this chapter as land owned by private littoral owners except as provided by Sections 31.161 through 31.167 of this code.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 13, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 5, eff. June 18, 2003.

Sec. 61.023. EFFECT ON LAND TITLES AND PROPERTY ADJACENT TO AND ON BEACHES. The provisions of this subchapter shall not be construed as affecting in any way the title of the owners of land adjacent to any state-owned beach bordering on the seaward shore of the Gulf of Mexico or to the continuation of fences for the retention of livestock across sections of beach which are not accessible to motor vehicle traffic by public road or by beach.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.024. EFFECT OF SUBCHAPTER ON DEFINITION OF PUBLIC BEACH. None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.025. DISCLOSURE TO PURCHASER OF PROPERTY. (a) A person who sells or conveys an interest, other than a mineral, leasehold, or security interest, in real property located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel must include in any executory contract for conveyance the following statement:

The real property described in this contract is located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel. If the property is in close proximity to a beach fronting the Gulf of Mexico, the purchaser is hereby advised that the public has acquired a right of use or easement to or over the area of any public beach by prescription, dedication, or presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

The extreme seaward boundary of natural vegetation that spreads continuously inland customarily marks the landward boundary of the public easement. If there is no clearly marked natural vegetation line, the landward boundary of the easement is as provided by Sections 61.016 and 61.017, Natural Resources Code.

State law prohibits any obstruction, barrier, restraint, or interference with the use of the public easement, including the placement of structures seaward of the landward boundary of the easement. STRUCTURES ERECTED SEAWARD OF THE VEGETATION LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD OF THE VEGETATION LINE AS A RESULT OF NATURAL PROCESSES SUCH AS SHORELINE

EROSION ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO REMOVE THE STRUCTURES.

The purchaser is hereby notified that the purchaser should:

(1) determine the rate of shoreline erosion in the vicinity of the real property; and

(2) seek the advice of an attorney or other qualified person before executing this contract or instrument of conveyance as to the relevance of these statutes and facts to the value of the property the purchaser is hereby purchasing or contracting to purchase.

(b) If there is no executory contract for conveyance, the statement must be delivered to, and receipt thereof acknowledged by, the purchaser prior to closing the transaction.

(c) Failure to include the statement in an executory contract for conveyance shall be grounds for the purchaser to terminate such contract, and upon termination any earnest money shall be returned to the party making the deposit.

(d) Failure to provide this statement prior to closing, either in the executory contract for conveyance or in a separate written statement, shall constitute a deceptive act under Section 17.46, Business & Commerce Code.

(e) This section, or the failure of a person to give or receive the notice required by this section, does not diminish or modify the beach access and use rights of the public acquired through statute or under common law.

Added by Acts 1985, 69th Leg., ch. 350, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 1987, 70th Leg., ch. 75, Sec. 1, eff. Aug. 31, 1987; Acts 1999, 76th Leg., ch. 508, Sec. 10, eff. Sept. 1, 1999.

Sec. 61.026. BEACH ACCESS PUBLIC AWARENESS AND EDUCATION. (a) The land office in conjunction with the Texas Department of Transportation shall design and produce a uniform bilingual beach access sign to be used by local governments to designate access ways to and from public beaches.

(b) The land office may develop and distribute public information about the requirements of this chapter, the importance of natural beach and dune systems, and the necessity for preserving them. Such information may include public service announcements made under the direction of the land office.

(c) The Texas A&M University Sea Grant Program shall make available to public schools materials for natural science classes which explain the importance of natural beach and dune systems and the necessity of preserving them.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 15, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 165, Sec. 22(54), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 245, Sec. 6, eff. June 18, 2003.

SUBCHAPTER C. MAINTENANCE OF THE PUBLIC BEACHES

Sec. 61.061. PURPOSE. It is the purpose of this subchapter to allocate responsibility for cleaning the beaches of this state and to preserve and protect local initiative in the maintenance and administration of beaches.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.062. PUBLIC POLICY. It is the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or continuous use. This creates a responsibility for the state, in its position as trustee for the public to assist local governments in the cleaning of beach areas which are subject to the access rights of the public as defined in Subchapter B of this chapter.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.063. DEFINITIONS. In this subchapter:

(1) "Clean and maintain" means the collection and removal of litter and debris and the supervision and elimination of sanitary and safety conditions that would pose a threat to personal health or safety if not removed or otherwise corrected and includes the employment of lifeguards, beach patrols, and litter patrols.

(2) "Land office" means the General Land Office.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 1, eff. Sept. 1, 1991.

Sec. 61.064. APPLICATION OF SUBCHAPTER. This subchapter

applies to incorporated cities, towns, and villages that are located or border on the Gulf of Mexico and to all counties that are located or border on the Gulf of Mexico if the city, town, or village or county that makes application for funds under this subchapter has within its boundaries public beaches.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 366, ch. 163, Sec. 1, eff. Aug. 27, 1979.

Sec. 61.065. DUTY OF CITIES. (a) It is the duty and responsibility of the governing body of any incorporated city, town, or village located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches within the corporate boundaries.

(b) The duty to clean and maintain the condition of public beaches does not extend to any public beach within the corporate boundaries that is owned by the county in which it is located. Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.066. DUTY OF COUNTY. It is the duty and responsibility of the commissioners court of any county located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches located inside the county but outside the boundaries of any incorporated city located or bordering on the Gulf of Mexico and all public beaches owned by the county and located inside the boundaries of an incorporated city, town, or village.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.067. DUTY OF STATE. (a) It is the duty and responsibility of the state to clean and maintain the condition of all public beaches located within state parks designated by the department.

(b) The land office shall consult with the department in adopting rules and procedures for cleaning beaches in state parks and areas adjacent to state parks.

(c) The land office shall expand the Adopt-A-Beach program to the greatest extent feasible to enhance the performance of its duties under this subchapter.

(d) The land office may use any cash, gifts, grants, donations, or in-kind contributions that it receives from a public or private entity through the administration of the Adopt-A-Beach program to assist a municipality, a county, or the department in performing any duty imposed on the city, county, or department by this subchapter.

(e) The land office may adopt rules reasonably necessary to perform its duties under this subchapter.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 7.01, eff. Sept. 1, 1991.

Sec. 61.068. APPLICATION REQUIREMENT. A city or county that seeks state funds under this subchapter to clean the public beaches must submit an application to the land office.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 3, eff. Sept. 1, 1991.

Sec. 61.069. CONTENTS OF APPLICATION. To be approved, the application must provide:

(1) for the administration or supervision of the public beaches of the city or county by a beach park board of trustees, county parks board, commissioners court, or other administrative body that the legislature may from time to time authorize, and provide that the board or agency will have adequate authority to administer an effective program of keeping clean the public beaches within its jurisdiction;

(2) for the receipt by the city or county treasurer or other officer exercising similar functions, if there is no city or county treasurer, of all funds paid to the city or county under this subchapter and provide for the proper safeguarding of the funds by the officer, provide that the funds will be spent solely for the purposes for which they are paid, and provide for the repayment by the city or county of any funds lost or diverted from the purposes for which paid;

(3) that the governing body of the city or county will make reports as to amounts and categories of expenditures that the

land office may from time to time require;

(4) that entrance to all public beaches under the jurisdiction of the governing body of the city or county is free of charge; and

(5) for the establishment, maintenance, and administration of at least one beach park by the city or county which meets the minimum requirements of size and facilities available to the public as determined by the land office.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 4, eff. Sept. 1, 1991.

Sec. 61.070. PARKING AND USE FEES. Subsection (4), Section 61.069 of this code shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.071. COMPLIANCE BEFORE APPROVAL. The land office shall not approve any application that fails to meet the conditions specified in Section 61.069 of this code.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 5, eff. Sept. 1, 1991.

Sec. 61.072. STATE FUNDS. The land office shall pay to each city or county that has an application approved under Sections 61.068 through 61.070 of this code from appropriations that are made available the state share for cleaning and maintenance of public beaches.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 6, eff. Sept. 1, 1991.

Sec. 61.073. CONDITIONS FOR PAYMENTS. No payments shall be made under this subchapter until the land office finds that:

(1) there will be available in the budget of the city or county not less than \$20,000 to clean and maintain public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought; and

(2) there will be available in the budget of the city or county for the purpose of cleaning and maintaining the public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought an amount not less than the total amount spent by the city or county to clean the beaches in the state fiscal year ending August 31, 1969.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 7, eff. Sept. 1, 1991.

Sec. 61.074. SUBMISSION OF PROPOSED EXPENDITURES. A city or county that seeks reimbursement under the provisions of this subchapter shall submit to the land office proposed expenditures for cleaning and maintaining the public beaches.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 8, eff. Sept. 1, 1991.

Sec. 61.075. FAIR DISTRIBUTION OF FUNDS. The land office shall distribute the state share to the cities and counties in a fair and impartial manner and under procedures and accounting methods to be adopted by the land office.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 9, eff. Sept. 1, 1991.

Sec. 61.076. LIMITATION ON STATE SHARE. (a) No city or county may receive as its state share an amount that is greater than two-thirds of the amount the city or county spends for the purpose of cleaning and maintaining public beaches within its jurisdiction during the state fiscal year for which reimbursement is sought.

(b) The land office shall allocate the state share to eligible cities and counties taking into account the frequency with which public beaches within the jurisdiction of the cities and counties are used.

(c) For purposes of determining the maximum amount of money a municipality may receive under Subsection (a), money received under Section 156.2511, Tax Code:

(1) is not included in determining the amount the municipality spends to clean and maintain public beaches during the state fiscal year for which reimbursement is sought; and

(2) is included as part of the state share.
Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 10, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 454, Sec. 9, eff. Sept. 1, 1995.

Sec. 61.077. FUNDS FOR ADMINISTRATIVE PURPOSES AND EMERGENCIES. (a) The land office may use for administrative purposes not more than 10 percent of the appropriated funds for any state fiscal year.

(b) The land office may withhold a portion of the appropriated funds to maintain a reserve emergency fund to be used for cleaning beaches in the event of a catastrophe, such as an oil spill, an influx of seaweed, or other major interference with public recreational use of public beaches.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 11, eff. Sept. 1, 1991.

Sec. 61.078. AUTHORITY TO SPEND COUNTY FUNDS. The commissioners court of any county located or bordering on the Gulf of Mexico may spend from any available fund the amount it considers necessary to carry out the responsibilities provided in this subchapter.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.079. NOTICE OF INELIGIBILITY. After reasonable notice and opportunity for a hearing to a city or county that is receiving funds under the provisions of this subchapter, if the land office finds that the city or county no longer complies with the requirements of this subchapter, it shall notify the city or county that further payments will not be made until the land office is satisfied that there is no longer any failure to comply.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 12, eff. Sept. 1, 1991.

Sec. 61.080. PUBLIC BEACHES IN INELIGIBLE CITY. (a) The governing body of any incorporated city located or bordering on the Gulf of Mexico that is not entitled to receive funds under this subchapter may contract with the commissioners court of the county in which the city is located to allow the county to clean the beaches within the corporate limits of the city.

(b) The city may apply to the land office for rebates of 40 percent of the contract price, and the city is not required to meet the terms and conditions imposed in Section 61.069 of this code unless otherwise provided by law.

(c) The land office shall make the rebates at the close of each fiscal year on a showing by the city that entrance to all public beaches under the jurisdiction of the city is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 13, eff. Sept. 1, 1991.

Sec. 61.081. PUBLIC BEACHES IN INELIGIBLE COUNTY. (a) The commissioners court of a county that is not entitled to receive funds under this subchapter may contract with the commissioners court of any adjacent county that is entitled to receive funds under this subchapter to allow the adjacent county to clean the public beaches of the ineligible county.

(b) The contracting county that is not entitled to receive funds under this subchapter may apply to the land office for rebates of 40 percent of the contract price, but the ineligible county is not required to meet the terms and conditions imposed in Section 61.069 of this code.

(c) The land office shall make the rebates at the close of each state fiscal year on a showing by the ineligible county that entrance to all public beaches under the jurisdiction of the county is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 14, eff. Sept. 1, 1991.

Sec. 61.082. AUTHORITY OF LOCAL GOVERNMENTS. (a) The provisions of this subchapter shall not be construed to interfere

with local initiative and responsibility in the cleaning, maintenance, and supervision of public beaches.

(b) The administration of public beaches, the selection of personnel, and the determination of the best uses of the funds insofar as is consistent with the purposes of this subchapter are reserved to the several political subdivisions receiving funds under this subchapter.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.083. EXEMPTIONS FROM SUBCHAPTER. None of the provisions of this subchapter apply to any beach area that does not border on the Gulf of Mexico or to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition exists.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. COUNTY REGULATION OF PUBLIC USE OF BEACHES

Sec. 61.121. DEFINITION. In this subchapter, "beach" shall have the same definition as provided in Section 61.012 of this code. Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.122. COUNTY REGULATORY AUTHORITY. (a) The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may regulate motor vehicle traffic on any beach within the boundaries of the county, including prohibiting motor vehicle traffic on any natural or man-made sand dune or other form of shoreline protection, and may prohibit the littering of the beach and may define the term "littering."

(b) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate the possession of animals on the beach within its boundaries, including but not limited to prohibiting animals to run at large on said beach.

(c) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate swimming in passes leading to and from the Gulf of Mexico, located within its boundaries, including but not limited to prohibiting swimming in said passes and posting signs notifying persons of such regulation or prohibition.

(d) The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may prohibit the use and possession of all glass containers and products on a beach in the unincorporated area of the county. The commissioners court shall not prohibit any one or several glass products to the exclusion of any others.

(e) Regulation under Subsection (a) of this section that prohibits vehicles from an area of public beach is subject to Section 61.022 of this code.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 775, ch. 341, Sec. 1, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 295, Sec. 16, eff. June 7, 1991; Acts 2001, 77th Leg., ch. 164, Sec. 2, 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 243, Sec. 1, eff. May 22, 2001.

Sec. 61.123. NOTICE OF HEARING. (a) Before the commissioners court adopts an order under Section 61.122 of this code, it must publish notice of the intention to adopt the order in at least one newspaper with general circulation in the county.

(b) The notice shall state the time and place of the public hearing on the proposed order and that interested persons may obtain copies of the proposed order from the commissioners court.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.124. COPIES OF ORDER. The commissioners court shall make copies of the proposed order available to interested persons.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.125. PUBLIC HEARING. (a) Not less than one month but more than two weeks after notice is published, the commissioners court shall conduct a hearing at the time and place stated in the notice.

(b) At the hearing, the commissioners shall allow all interested persons to express their views on the proposed order.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.126. TRAFFIC REGULATIONS. If the order includes a traffic regulation, the order shall provide for signs that are

designed and posted in compliance with the current provisions of the Texas Manual on Traffic Control Devices for Streets and Highways, stating the applicable speed limit, parking requirement, or that vehicles are prohibited.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.127. CRIMINAL PENALTIES. In any order adopted under this subchapter, the commissioners court may adopt the following criminal penalties for violation of the order:

(1) for a first conviction, a fine of not less than \$50; nor more than \$100;

(2) for a second conviction, a fine of not less than \$100 nor more than \$200;

(3) for any subsequent convictions after the second conviction, a fine of not less than \$200 nor more than \$1,000 or confinement in the county jail for not more than 60 days, or both. Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 585, Sec. 3, eff. Sept. 1, 1985.

Sec. 61.128. ORDER PREVAILS OVER STATE LAW. If an order adopted under this subchapter conflicts with the general law of the state, the order shall control over the state law, and in cases of violation, prosecution may be maintained only under the order. Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.129. ORDINANCE PREVAILS OVER ORDER AND STATE LAW. (a) Except as provided in Section 61.022 of this code, this subchapter does not limit the power of an incorporated city, town, or village bordering on the Gulf of Mexico or any adjacent body of water to regulate motor vehicle traffic and prohibit littering on any beach within its corporate limits.

(b) If these regulatory ordinances are adopted by a city, town, or village and the ordinance conflicts with the general law of the state or with an order of the commissioners court adopted under this subchapter, and the ordinance is consistent with policies and rules under Section 61.011 of this code, the ordinance shall control over the state law and the order, and in cases of violation, prosecution may be maintained only under the ordinance.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 17, eff. June 7, 1991.

Sec. 61.130. RIGHTS OF THE PUBLIC. The right of the public to use the public beaches defined in this subchapter is inviolate and is subject only to orders adopted by a commissioners court under this subchapter and to ordinances enacted by an incorporated city, town, or village.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.131. EFFECT OF SUBCHAPTER ON DEFINITION OF PUBLIC BEACH. None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. LICENSES FOR BUSINESS ESTABLISHMENTS

Sec. 61.161. PUBLIC POLICY. It is the public policy of this state that the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, if the public has acquired a right of use or easement to or over the area by the prescription or dedication or has retained a right by virtue of continuous right in the public, shall be used primarily for recreational purposes, and any use which substantially interferes with the enjoyment of the beach area by the public shall constitute an offense against the public policy of the state. Nothing in this subchapter prevents any agency, department, political subdivision, or municipal corporation of this state from exercising its lawful authority under any law of this state to regulate safety conditions on any beach area subject to public use.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.162. FINDINGS. (a) The legislature finds that the operation and maintenance of business establishments at fixed or permanent locations on the public beaches of this state bordering

on the seaward shore of the Gulf of Mexico constitute a potential public health hazard and a substantial interference with the free and unrestricted rights of ingress and egress of the public, both individually and collectively, to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) The legislature finds that a reasonable number of mobile business establishments which traverse the public beach while doing business are beneficial to the public interest and do not interfere with the free and unrestricted rights of ingress and egress of the public as provided in this subchapter.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.163. DEFINITION. In this subchapter, "business establishment" means any structure or vehicle where any commodity including memberships in any private club or other similar organization is offered to the public for sale or lease but does not include any structure or vehicle where only services are offered to the public for sale.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.164. APPLICATION. A person who desires to operate a mobile business establishment on a public beach located outside the municipal limits of an incorporated city shall submit a written application to the county of jurisdiction.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 1, eff. Aug. 28, 1995.

Sec. 61.165. CONTENTS OF APPLICATION. The application shall include:

- (1) the name and street address of the applicant;
- (2) the commodity to be sold or leased; and
- (3) the limits of the territory within which the mobile business establishment will operate.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.166. FILING FEE. (a) The application shall be accompanied by a filing fee in an amount determined by the county.

(b) The filing fee may be used by the county to pay the expenses of carrying out the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 75, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 63, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 399, Sec. 2, eff. Aug. 28, 1995.

Sec. 61.167. SEPARATE APPLICATIONS. Any applicant who plans to operate more than one mobile business establishment must file a separate application accompanied by a separate filing fee for each mobile business establishment that he seeks to have licensed.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.168. GRANTING LICENSE. (a) On finding that the issuance of a license is consistent with recreational needs and the public welfare, and that the mobile business establishment would not create a traffic or safety hazard, and on compliance with this subchapter by the applicant, the county shall grant the license.

(b) The license shall be valid for a term selected by the county, not to exceed two years from the day it is issued.

(c) If the license is not granted, the county shall return the filing fee to the applicant.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 342, Sec. 1, eff. June 10, 1985; Acts 1995, 74th Leg., ch. 399, Sec. 3, eff. Aug. 28, 1995.

Sec. 61.169. APPLICATIONS NOT TO BE GRANTED. The county shall not grant an application:

- (1) for a business establishment located at a fixed or permanent location on a public beach; or

- (2) that does not otherwise meet the terms and provisions of this subchapter.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 4, eff. Aug.

28, 1995.

Sec. 61.170. LICENSE PROHIBITION AGAINST GLASS CONTAINERS. (a) Each license granted under this subchapter authorizing the sale of commodities on a public beach shall include a prohibition against the sale of any commodity in a glass container.

(b) Any person selling a commodity in a glass container on a public beach outside the boundaries of any incorporated city shall have his rights conferred by the license immediately terminated and revoked as provided in Section 61.172 of this code.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.171. ASSIGNMENT. No license issued under this subchapter may be assigned.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.172. TERMINATION AND REVOCATION OF LICENSE. (a) The failure or refusal of the licensee to comply with the terms and conditions of a license shall operate as an immediate termination and revocation of all rights conferred in or claimed under the license.

(b) The termination and revocation of the license is not effective until notice is delivered by mail to the address of the licensee listed on the application for the license.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.173. MAXIMUM TERRITORIAL LIMITS. (a) If territorial limitations are applied uniformly to all applicants seeking to operate mobile business establishments in the territory, the county may establish maximum territorial limits over which mobile business establishments may operate.

(b) A license to sell or lease only surfboards and related equipment may not be limited as to the territory over which the mobile business establishment may operate.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 5, eff. Aug. 28, 1995.

Sec. 61.174. ADDITIONAL STANDARDS. In addition to other standards provided in this subchapter, it is the intention of the legislature that the county exercise the authority delegated to it under this subchapter according to the following considerations:

(1) that the number of mobile business establishments licensed by the county should not constitute a substantial interference with the free and unrestricted rights of ingress and egress of the public provided in this subchapter;

(2) that the number of licenses issued by the county under this subchapter are sufficient to ensure free and unrestricted competition in selling or leasing of commodities to the public; and

(3) that no person should be allowed to operate any mobile business establishment on any public beach in restraint of trade or competition by which the person controls all or substantially all the business establishments on the public beach licensed by the county.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 6, eff. Aug. 28, 1995.

Sec. 61.175. RULES, PROCEDURES, AND CONDITIONS. The county may establish additional rules, procedures, and conditions necessary or appropriate to carry out the purposes of this subchapter.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 7, eff. Aug. 28, 1995.

Sec. 61.176. AREAS EXEMPT FROM SUBCHAPTER. This subchapter does not apply to a public beach that is within the boundaries of a state park designated by the department or to a remote beach on any island or peninsula which is not accessible by public road or common carrier ferry facility as long as that condition exists.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.177. PENALTY. A person, who for himself or on behalf of or under the direction of another person, operates any business establishment, whether mobile or at a fixed or permanent location, on any public beach outside the boundaries of any incorporated city

without first obtaining a license to operate the business establishment from the county shall be fined not less than \$10 nor more than \$200.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 8, eff. Aug. 28, 1995.

Sec. 61.178. ENFORCEMENT. At the request of a county, department game wardens will assist with enforcement of the provisions of this Act, or permits issued hereunder, along with any other state or local law enforcement entities with jurisdiction over public beaches.

Added by Acts 1995, 74th Leg., ch. 399, Sec. 9, eff. Aug. 28, 1995.

SUBCHAPTER F. REMOVAL OF SAND, MARL, GRAVEL, AND SHELL

Sec. 61.211. FINDINGS. The legislature finds that the unregulated excavation, taking, removal, and carrying away of sand, marl, gravel, and shell from islands and peninsulas bordering on the Gulf of Mexico and from the public beaches of the state constitute a substantial interference with public enjoyment of Texas beaches and a hazard to life and property.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.212. EXEMPTIONS FROM SUBCHAPTER. (a) The provisions of this subchapter do not apply:

(1) to excavating, taking, removing, or carrying away sand, marl, gravel, or shell made for the purpose of constructing improvements on real property if the improvements are constructed on the property on which the excavating, taking, removing, or carrying away occurs;

(2) to any landowner who desires to shift sand, marl, gravel, or shell from one location to another on land wholly owned by him; or

(3) to any agency of the federal or state government or any county, city, or other political subdivision or any of their agents or officers acting in their official capacities.

(b) Any person who holds a lease that was issued by the state under Chapter 377, Acts of the 57th Legislature, Regular Session, 1961 (Article 5415e, Vernon's Texas Civil Statutes), before it was repealed shall be treated as an owner of the land and shall be entitled to excavate, take, remove, and carry away sand, marl, gravel, or shell for the purposes provided in Subsection (a) of this section without obtaining a permit from the commissioners court.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.213. APPLICATION. Before a person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a mainland public beach that is located outside the boundaries of an incorporated city, town, or village, he must submit a written application to the commissioners court of the county in which the excavation, taking, removal, or carrying away is to take place.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.214. CONTENTS OF APPLICATION. The application shall include:

(1) the name of the applicant;

(2) the location and dimensions of the proposed excavation;

(3) the property interest or contractual right that enables the applicant to excavate, take, remove, or carry away sand, marl, gravel, or shell; and

(4) certification by the county treasurer, or other official exercising similar authority if there is no county treasurer, that the applicant has deposited a filing fee of \$50.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.215. PREREQUISITES TO ISSUANCE OF PERMIT. No permit may be issued by the commissioners court under this subchapter to excavate, take, remove, or carry away sand, marl, gravel, or shell from land owned by the state, public beach, or privately owned land that is subject to this subchapter and that is not located on a public beach, unless the applicant is the owner of the land on which the proposed excavating, taking, removing, or carrying away is to take place or unless the applicant is acting with the knowledge and consent of the owner.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.216. NOTICE OF APPLICATIONS RECEIVED. (a) The commissioners court shall give public notice of all applications received for permits to excavate, take, remove, or carry away sand, marl, gravel, or shell.

(b) The notice shall be published once in a newspaper of general circulation in the county.

(c) The notice shall include the name of the applicant and the location and dimensions of the proposed activity.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.217. PUBLIC HEARING. (a) The commissioners court shall hold a public hearing if the hearing is requested by any citizen within 10 days after notice is published under Section 61.216 of this code.

(b) The hearing may not be held less than 30 days from the date of the first publication of notice under Section 61.218 of this code.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.218. NOTICE OF PUBLIC HEARING. Notice of the public hearing shall be published at least once a week for at least two weeks in a newspaper of general circulation in the county.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.219. ISSUANCE OF PERMIT. (a) On a finding that the proposed excavating, taking, removing, or carrying away would not create hazardous conditions or imperil lives or property by exposing the island or peninsula or public beach to the ravages of storm water, the commissioners court may issue a permit to the applicant, and it shall be valid for six months from the date of its issuance.

(b) The decision to issue a permit shall be made with the advice and counsel of the county engineer in counties in which the commissioners court employs a county engineer.

(c) None of the provisions of this subchapter prohibit a commissioners court from issuing a permit to a person who holds a right-of-way easement granted by the commissioner for a pipeline to cross state land, provided the applicant complies with the provisions of this subchapter relating to the issuance of permits.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.220. RETURN OF FILING FEE. If the commissioners court refuses to issue the permit, the applicant may recover his filing fee from the county treasurer or other official exercising similar authority if there is no county treasurer.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.221. ASSIGNMENT OF PERMITS. No permit may be assigned without the approval of the commissioners court.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.222. TERMINATION AND REVOCATION OF PERMIT. Failure or refusal of the permittee to comply with the terms and conditions of the permit operates as an immediate termination and revocation of all rights conferred by or claimed under the permit.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.223. SUITS FOR ORDERS AND INJUNCTIONS. The attorney general, any county attorney, district attorney, or criminal district attorney of the state shall file in a district court in the county in which the conduct takes place, a suit seeking temporary or permanent court orders or injunctions to prohibit any excavating, taking, removing, or carrying away of any sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state if the land is located outside the boundaries of an incorporated city, town, or village in violation of the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.224. PENALTY. A person who for himself or on behalf of or under the direction of another person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land

located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state, if the land is located outside the boundaries of any incorporated city, town, or village, in violation of the provisions of this subchapter shall be fined not less than \$10 nor more than \$200. Each day a violation occurs constitutes a separate offense. Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.225. SAND, MARL, GRAVEL, OR SHELL FROM PUBLIC BEACHES WITHIN INCORPORATED CITIES, TOWNS, OR VILLAGES. No incorporated city, town, or village having within its boundaries a public beach may authorize a person to excavate, take, remove, or carry away any sand, marl, gravel, or shell from the public beach except for the construction of a publicly owned and operated recreational facility or for the construction of a shoreline protection structure. Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.226. APPLICATION OF SUBCHAPTER TO CERTAIN ISLANDS AND PENINSULAS. The provisions of this subchapter do not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition continues. Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.227. AUTHORITY OF PARKS AND WILDLIFE DEPARTMENT. None of the provisions of this subchapter may be construed to repeal or modify the provisions of Chapter 86, Parks and Wildlife Code, which relate to the powers and duties of the Parks and Wildlife Department over matters pertaining to the sale, taking, carrying away, or disturbing of sand, marl, gravel, or shell of commercial value and gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation, nor may this subchapter be construed to create additional or supplemental requirements or procedures to those provided in Chapter 86, Parks and Wildlife Code. Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. PERMITS FOR MASS GATHERINGS

Sec. 61.251. DEFINITION. In this subchapter, "mass gathering" means a gathering that attracts or is expected to attract more than 200 individuals who will remain at the location of the gathering for more than two continuous hours. Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.

Sec. 61.252. PERMIT REQUIREMENTS. (a) To protect the public health, safety, and welfare, the commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may regulate mass gatherings of individuals on any beach in the unincorporated area of the county by requiring a person to obtain a permit and pay a permit fee set by the commissioners court before the person may hold a mass gathering.

(b) A commissioners court that requires a permit under this subchapter must adopt procedures governing the application for and issuance of a permit under this subchapter. The commissioners court may require the holder of the permit to take reasonable specified actions to protect the public health, safety, and welfare.

Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.

Sec. 61.253. INJUNCTION. The county is entitled to appropriate injunctive relief to prevent the violation or threatened violation of an order adopted under this subchapter. Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.

Sec. 61.254. CRIMINAL PENALTY. A person commits an offense if the person violates an order adopted under this chapter. An offense under this section is a Class B misdemeanor. Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.